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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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10 JUAN CURIEL-SALAZAR

ORDER

11 Petitioner,

12 Cr. No. 2:05-0164 WBS

13 v. Civ. No. 2:06-1159 WBS

14 UNITED STATES OF AMERICA,

15 Respondent.

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17 Defendant Juan Curiel-Salazar has filed a petition for
18 relief pursuant to 28 U.S.C. § 2255. The United States Attorney
19 has filed his opposition to the petition; and defendant has now
20 filed his reply.

21 The sole basis of defendant's petition is that his
22 court appointed counsel, Federal Defender Daniel J. Broderick,
23 rendered ineffective assistance by failing to file notice of
24 appeal on his behalf as directed by defendant. However, in his
25 written plea agreement defendant expressly waived his right to
26 appeal, with the following language:

27 The defendant understands that the law gives him a
28 right to appeal his conviction and sentence. He
agrees as part of his plea, however, to freely,
knowingly and voluntarily give up the right to
appeal any aspect of his conviction or sentence.

1 The defendant also gives up any right he may have
2 to bring a post-conviction attack on any aspect of
3 his conviction or sentence. He specifically
4 agrees not to file a motion under 28 U.S.C. § 2255
5 or § 2241 attacking any aspect of his conviction
6 or sentence.

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8 Further, during his Rule 11 colloquy with the court, defendant
9 specifically acknowledged that he understood the agreement and
10 voluntarily agreed to the waiver, as follows:

11 THE COURT: In your written plea agreement, you're also
12 giving up your right to appeal from your conviction or
13 your sentence, and you're giving up your right to
14 collaterally attack your conviction or your sentence. Do
15 you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: Having all that in mind, do you wish to waive
18 all those rights at this time and to enter a plea of
19 guilty?

20 THE DEFENDANT: Yes.

21 Such waivers are enforceable. See United States v. Abarca, 985
22 F.2d 1012 (9th Cir. 1993).

23 Defendant received the full benefit of everything
24 promised in his plea agreement. His allegation that he
25 requested Mr. Broderick to file notice of appeal on his behalf
26 is disputed in this case. Nevertheless, even assuming that
27 defendant did make such a request of Mr. Broderick, because
28 defendant had validly waived his right to appeal from his
conviction or sentence, it follows that his counsel could not
have rendered ineffective assistance by failing to file notice
of appeal. Defendant's petition must accordingly be denied.

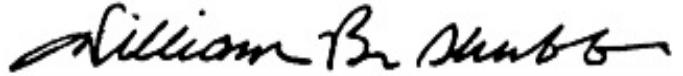
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1 IT IS THEREFORE ORDERED that defendant's petition for
2 relief pursuant to 28 U.S.C. § 2255 be, and the same hereby is,
3 DENIED.

4 DATED: July 26, 2006

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7 WILLIAM B. SHUBB
8 UNITED STATES DISTRICT JUDGE

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